

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 15-cr-20309  
Hon. Matthew F. Leitman

v.

MICHAEL ALAN PIAR,

Defendant.

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**ORDER DENYING DEFENDANT’S 18 U.S.C. § 3582(c)(2) MOTION  
FOR APRIL 28, 2016 AMENDMENTS TO THE SENTENCING  
GUIDELINES INCLUDING THE CHANGES TO THE FIVE-LEVEL  
DISTRIBUTION ENHANCEMENT (ECF #38)**

On June 16, 2016, this Court entered a judgment of sentence in this case in which it sentenced Defendant Michael Piar to one-hundred months in custody in connection with his plea-based conviction for distribution of child pornography. The sentence was far below the sentencing guidelines range as determined by the Court (210-240 months) and well below the sentence requested by the government (144 months).

In calculating the guidelines range, the Court added five offense levels under Section 2G2.2(b)(3)(B) on the ground that Piar distributed child pornography “not for pecuniary gain.” On April 28, 2016, the United States Sentencing Commission adopted Amendment 801, which, among other things, amended Section

2G2.2(b)(3)(B). Amendment 801 became effective November 1, 2016 – roughly five months after the Court sentenced Piar. The Sentencing Commission explained that the change to Section 2G2.2(b)(3)(B) clarified that the five-level enhancement applies “if the defendant distributed in exchange for any valuable consideration.” U.S.S.G. § 2G2.2(b)(3)(B) cmt. 1. The Commission further explained that “valuable consideration” included, among other things, “other child pornographic material.” *Id.*

On August 25, 2017, Piar moved under 18 U.S.C. § 3582(c) for a reduction in his sentence based upon the change to Section 2G2.2(b)(3)(B) embodied in Amendment 801. The motion is **DENIED**.

In relevant part, 18 U.S.C. § 3582(c) provides:

The court may not modify a term of imprisonment once it has been imposed except that—

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(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, *if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.*

18 U.S.C. § 3582(c)(2) (emphasis added).

The Sentencing Commission's policy statement, which is codified at U.S.S.G. § 1B1.10, allows for sentence reductions based only on amendments to the guidelines that are specifically listed in Section 1B1.10(d). Amendment 801 is not listed there. Accordingly, Piar is not entitled to relief based on the change to Section 2G2.2(b)(3)(B) embodied in Amendment 801. *See, e.g., United States v. Maciel*, \_\_\_ Fed. Appx. \_\_\_, 2017 WL 3309756 (11th Cir. 2017) (denying relief based upon change to Section 2G2.2(b)(3)(B) because Amendment 801 is not listed in 1B1.10(d)); *United States v. Nicoll*, \_\_\_ Fed. Appx. \_\_\_, 2017 WL 3327824 (4th Cir. 2017) (same).

Even if Amendment 801 and the change to Section 2G2.2(b)(3)(B) applied here, Piar still would not be entitled to relief. His conduct fits squarely within the guideline as amended. Piar distributed child pornography in order to receive other child pornography. He traded to upgrade his collection. That is exactly what the amended guideline is intended to cover (among other things). The Court declines to reduce Piar's sentence.

**IT IS SO ORDERED.**

/s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 3, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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